THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE K.C.BHANU

DATED:01-09-2006.

WRIT APPEAL NOS.641 AND 649 OF 2005

W.A.NO.641 OF 2005

Sambari Prabhakar son of
Chinnaiah, aged 41 years, Sarpanch,
Metpally villag and Mandal, Karimanagar District.

.Appellant

vs

1.The Government of Andhra Pradesh
represented by its Chief Secretary, Secretariat
Buildings, Hyderabad and 6 others

.Respondents

W.A.NO.649 OF 2005

Annam Nagaraj son of Vittal, aged
28 years, 20th ward Member, r/o Metpally
village and Mandal, Karimanagar District and 15 others

.Appellants

vs

1.The Government of Andhra Pradesh
represented by its Chief Secretary, Secretariat
Buildings, Hyderabad and 5 others

.Respondents

COMMON JUDGMENT(Per the Hon'ble Sri K.C.Bhanu,J)

These Writ Appeals are filed against the common order in

W.P.Nos.22194 of 2004 and 22833 of 2004, dated
07-03-2005 respectively.

W.P.No.22194 of 2004 is filed by the Sarpanch of Metpally Grama Panchayat, whereas W.P.No.22833 of 2004 is filed by the members who were elected from different wards of Grama Panchayat. In both the writ petitions, the petitioners pray to declare G.O.Ms.No.359, Panchayat Raj and Rural Development Department, (PTS.IV), dated 26-11-2004, whereunder the notification in which the area of Metpally was declared as Grama Panchayat was cancelled with immediate effect so as to declare the said area as third grade Municipality as well as the consequential notifications in G.O.Ms. Nos. 498 & 499, dated 26-11-2004, whereunder the area covered against erstwhile Metpally Grama Panchayat as smaller urban area with immediate effect and declare the newly constituted Metpally Municipality as third grade Municipality with immediate effect.

Under G.O.Ms.No.499, the Governor of Andhra Pradesh appointed Revenue Divisional Officer, Jagital as a Special Officer for the newly constituted Metpally Municipality to exercise powers, perform duties and discharge functions of the Municipality.

In these appeals it is contended by the learned counsel for the appellants that Rule 12 of Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 and the procedure contemplated in the rules have not been followed, that issuance of show cause notice is not for empty formality, that non specification of the area as provided under clause (42-a) of Section 2 of A.P. Municipalities Act, 1965 and that the Governor

has no power to rescind the Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 and the said notification issued under G.O.Ms.No.163 Panchayat Raj and Rural Development Department (PTS. IV), dated 08-05-2002 has not been placed before the assembly and therefore, he prays to set aside the impugned orders.

On the other hand, learned Government Pleader for Panchayat Raj and Municipal Administration contended that since Rule 12 of the Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 is rescinded by the Governor and the same was Gazetted on 08-05-2002, question of following the Rule 12 of the said rules does not arise and that in the first instance Clause 42-a of Section 2 of the A.P. Municipalities Act, 1965 has been followed declaring the area covered against erstwhile Metpally Grama Panchayat as a smaller urban units and thereafter Metpally municipality was constituted as a third grade municipality and therefore, there are no grounds to interfere with the impugned orders.

Main challenge was made to G.O.Ms.No.359, Panchayat Raj and Rural Development Department (PTS.IV), dated 26-11-2004 which reads as follows:

> "In exercise of the powers conferred under clause (f) of sub-section (2) of Section 3 of Andhra Pradesh Panchayat Raj Act, 1994 (Act No.13 of 1994) read with clause (l) of sub-rule (1) of rule 12 of the Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 issued in G.O.Ms.No.515, the Governor of Andhra Pradesh hereby cancel notification in which the area of Metpally of Karimanagar District was declared as village and as Gram Panchayat with immediate effect so as to declare the said

area as third grade municipality."

Though Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 has been referred in the notification, but admittedly during the course of arguments, the learned Government Pleader brought to the notice of this Court that G.O.Ms.No.163 Panchayat Raj and Rural Development Department (PTS.IV), dated 08-05-2002 which was published in Extraordinary Gazette of A.P., dated 29-05-2002 whereunder the Government of A.P. rescinds Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 issued in G.O.Ms.No.515 Panchayatraj Rural Development and Relief (Mandal-I) Department, dated 17-08-1994 was published in A.P. Gazette Part-VII Extraordinary, dated 22-08-1994 and subsequent G.Os and executed instructions issued by the Panchayat Raj Rural Development Relief Department. Sub clause 1 of Section 3 of Andhra Pradesh Panchayat Raj Act, 1994 reads that the Government (as amended by Act No. 22 of 2002 w.e.f. 20-06-2002) may by notification and in accordance with the rules made in this behalf declare any revenue village or hamlet thereof or any part of a mandal to be a village for the purpose of this Act and specify the name of the village. Under Sub rule 2, the Government may by notification and in accordance with such rules as may be prescribed in this behalf may cancel a notification issued under sub section (1). Therefore, the Government has power to cancel the notification issued under sub section (1). The power of the Government to issue such a notification issued the impugned notification is discernable to a statutory provision. When the said

G.O.Ms.No.359, dated 26-11-2004 is issued under Section 3 (2) (f) of the Act, it cannot be said that it is without jurisdiction.

Though it is sought to be contended that the Governor has no authority to rescind Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994, but under Section 268 (1) of the Andhra Pradesh Panchayat Raj Act, 1994, (for short 'the Act') the Government shall in addition to the rule making powers conferred on them by any other provisions of the Act, have power to make rules generally to carry out all or any of the purpose of the said Act. The only restriction imposed under sub section 3 of Section 268 of the Act should be that the rules under the said Act shall be published in G.P. Gazette. But the contention of the learned counsel for the appellants is that every rule made under the Act shall immediately after it is made, be laid before the Legislative Assembly of the State if it is in session, and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions. But sub section 4 of Section 268 applies where the rule is made under the Act, it should be laid before the Legislative Assembly. But in this case, the Government has not made any rules under Section 268 (1) of the Act, but only rescinded Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994. In the absence of any rules made in exercise of powers under Section 268 (1) of the Act, question of placing before the Legislative Assembly of the State does not arise as required under sub rule 4 of Section 268 of the Act. The Government has source of power to cancel a notification issued

under sub section 1 of Section 3 of the Act. Therefore, we are of the opinion that G.O.Ms.No.359, dated 26-11-2004 is completely in accordance with law.

Though the contention raised before the learned single Judge that passing of resolution does not dispense with mandatory provisions of Rule 12 of Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 which requires that before issuance of notification under clause (f) of Sub Section 2 of Section 3 of the Act, an opportunity to show cause against the proposal to indicate its decision should be given. But the learned single Judge came to the conclusion that the Gram Panchayat has passed an unanimous resolution for upgradation of Gram Panchayat into Municipality, much prior to the impugned notifications, issuance of notice under Rule 12 cannot be held to be mandatory. We are not required to decide that issue in view of the fact that Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 was not in existence by the date of issuance of G.O.Ms.No.359, dated 26-11-2004 since the said rules were rescinded with immediate effect i.e., on the date of Gazette notification on 29-05-2002. This aspect of the case must not have brought to the notice of the learned single Judge. Therefore, the contention of the learned counsel for the appellants herein that Rule 12 of Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 is violated is wholly devoid of merit and untenable. When such a rule is not in existence, issuance of show cause notice does not arise. Therefore, the decision relied upon by the learned counsel for the appellants reported in 1971 (1) APLJ

18 SN whereunder it is held that the provisions of issuance of show cause notice to the Gram Panchayat is not an empty formality and non compliance of the impugned G.O. has no application in view of the fact that Rule 12 is not in existence as on the date of issuance of impugned G.O.

The learned counsel for the appellants contended that without specifying transitional area under smaller urban area as provided under clause (42-a) of Section 2 of A.P. Municipalities Act, 1965, the impugned G.O. is unsustainable in view of the decision reported in **D.SURYANARAYANA AND OTHERS V GOVERNMENT OF A.P. MUNICIPAL ADMINISTRATION DEPARTMENT AND OTHERS** [1], wherein it was held that:

> "What all required by the Statute is compliance of the provision under Clause (42-a) of Section 2 by specifying the area as 'transitional area'. In our view specifying 'transitional area' under Clause (42-a) is the first and a necessary pre-requisite for constitution of a Nagar Panchayat under Section 2-A"

Clause (42-a) reads as follows:

> "(42-a) 'Transitional area' or 'a smaller urban area' means such area as the Governor may, having regard to the population of area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other facts as he may deem fit, specify by public notification for the purposes of this Act, subject to such rules as may be made in this behalf."

The learned Government Pleader contended that the Government of A.P. in the first instance declaring the areas

covered under the erstwhile Metpally Gram Panchayat as a smaller urban area in exercise of powers conferred under clause (42-a) of Section 2 of A.P. Municipalities Act, 1965. Thereafter second notification was issued declaring Metpally Municipality as a third grade municipality. The learned Judges of this Court held that there should be transitional area or a smaller urban area as the case may be has to be necessarily specified by a public notification under clause (42-a) of Section 2 of the A.P. Municipalities Act, 1965 in order to attract Section 2-A of the said Act. In the first instance, the Government issued 1st notification No.498 constituting a smaller urban area and thereafter Metpally Municipality area as third grade Municipality. But it is not a case of straight away constituting the Municipality as in the factual scenario of the decision cited by the learned counsel for the appellants. It is stated that under Rule 3 of the Andhra Pradesh Transitional Area and Smaller Urban Areas (Fixation of Criteria) Rules, 1995, the criterion has been specified by Metpally Gram Panchayat as per the contents of the counter affidavit filed by the respondents. Even the learned counsel for the appellants has not seriously disputed the above violation of Rule 3 of the said rules. Therefore, viewed from any angle, the impugned common order under challenge does not suffer from any illegalities so as to call for interference by this Court.

In the above circumstances, both the Writ Appeals are dismissed confirming the orders of the learned single Judge. No costs.

BILAL NAZKI, J

K.C.BHANU, J

DATED:01-09-2006

Hsd

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[1] 2000 (2) ALT 787 (D.B.)